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In re Application of  
CHOO, Yen

Serial No.: 10/530,128

PCT No.: PCT/GB03/04287

Int. Filing Date: 03 October 2003

Priority Date: 03 October 2002

Atty. Docket No.: 05-278

For: CELL CULTURE

DECISION

This decision is issued in response to applicant's "Petition Under 37 CFR 1.137(b) For Revival of an Unintentionally Abandoned Application" filed 07 April 2006 and applicant's facsimile communication dated 22 August 2006. The submission is being treated as a Petition under 37 CFR 1.181 to vacate the Notification of Defective Response (Form PCT/DO/EO/916) mailed 14 February 2006.

### BACKGROUND

On 03 October 2003, applicant filed international application no. PCT/GB03/04287 which claimed a priority date of 03 October 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 15 April 2004. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 04 April 2005.

On 04 April 2005, applicant filed a transmittal for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and an information disclosure statement.

On 23 August 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that declaration in compliance with 37 CFR 1.497(a) and (b) was required.<sup>1</sup>

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<sup>1</sup>The Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) did not indicate that a sequence listing in compliance with 37 CFR 1.821-1.825 was required.

On 21 October 2005 applicant filed an executed declaration and power of attorney.

On 14 February 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that a sequence listing in compliance with 37 CFR 1.821-1.825 had not been filed. Applicant was required to respond within one month from the date of the notification or within the time remaining in the Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905).

On 07 April 2006, applicant filed the present Petition Under 37 CFR 1.137(b) For Revival of an Unintentionally Abandoned Application.

On 22 August 2006, applicant filed a "Status Inquiry" which included a copy of the petition to revive filed 07 April 2006.

### **DISCUSSION**

As discussed above, the Notification Of Missing Requirements mailed 23 August 2005 identified only one outstanding requirement in the present application, an executed oath or declaration in compliance with 37 CFR 1.497. The Notification Of Missing Requirements did not identify any deficiency or outstanding requirement with respect to the sequence listing materials. Applicant's 21 October 2005 response to the Notification of Missing Requirements included the requirement identified in the Notification Of Missing Requirements, that is, an executed declaration. Applicant's 21 October 2003 submission was therefore a complete and proper response to the Notification Of Missing Requirements.

The 14 February 2006 mailing of a Notification Of Defective Response requiring the submission of sequence listing materials that had not been identified as outstanding requirements in the Notification Of Missing Requirements was therefore improper. The Notification Of Defective Response mailed 14 February 2006 is therefore appropriately vacated.

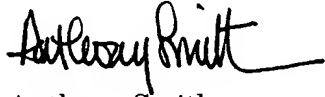
Based on the above, the present application did not become abandoned for failure to file a timely response to the Notification Of Defective Response. Applicants' petition to revive the application is therefore moot.

### **CONCLUSION**

Applicant's petition under 37 CFR 1.181 is **GRANTED** and the Notification Of Defective Response (Form PCT/DO/EO/916) mailed 14 February 2006 is hereby **VACATED**.

The petition to revive the application under 37 CFR 1.137(b) is therefore **DISMISSED AS MOOT**.

This application is being forwarded to the National Stage Processing Branch of the Office Of PCT Operations for further processing in accordance with this decision, including a review of the sequence listing materials filed by applicants on 22 August 2006. If these sequence listing materials are not adequate, then a new Notification Of Missing Requirements should be issued identifying the required materials.



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